

Part IV

Department of the Treasury

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Bureau of Alcohol, Tobacco and Firearms

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27 CFR Part 200, et al.

Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions, etc.; Final and Proposed Rules

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[T.D. ATF-421]  
RIN 1512-AB99

Implementation of Public Law 105-33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R-369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Temporary rule (Treasury decision).

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SUMMARY: This temporary rule implements several provisions of the Balanced Budget Act of 1997. Section 9302 of the new law: places restrictions on the importation of previously exported tobacco products, requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and authorizes the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit.

The temporary rule implements these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Additionally, the Bureau of Alcohol, Tobacco and Firearms (ATF) has made several other clarifying changes to the tobacco regulations. This temporary rule will remain in effect until superseded by final regulations.

In the Proposed Rules section of this Federal Register, ATF is also issuing a notice of proposed rulemaking that invites comments on this temporary rule for a 60-day period following the publication of this temporary rule.

DATES: These temporary regulations are effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers or Mr. Daniel Hiland, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927-8210, or alcohol/tobacco@atfhq.atf.treas.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

This temporary rule implements several provisions in section 9302 of the Balanced Budget Act of 1997 (Act), Pub. L. 105-33, 111 Stat. 672. Section 9302 amends the Internal Revenue Code of 1986 (IRC) at sections 5704(b), 5712, 5754 and 5761(c). These new provisions relate to tobacco products, cigarette papers and tubes importation restrictions, markings, minimum manufacturing requirements and penalty provisions concerning tobacco products, and cigarette papers and tubes.

Congress amended the IRC so that the Secretary of the Treasury can more effectively enforce the collection of Federal excise taxes on such products. These provisions protect the Federal excise tax revenues derived from tobacco products, and cigarette papers and tubes. The Joint Committee on Taxation's "General Explanation of Tax Legislation Enacted in 1997" stated that the purpose of the amendments was to impose "expanded compliance measures designed to prevent the diversion of non-taxpaid tobacco products nominally destined for export to use within the United States." As the delegate of the Secretary of the Treasury (See Treasury Department Order 120-01 (formerly 221), dated June 6, 1972) ATF is implementing these new provisions by regulation.

##### Marks, Labels and Notices

## Current Law

The Federal excise tax on tobacco products, and cigarette papers and tubes is due on their removal from bonded premises. See 26 U.S.C. 5703. There are several exemptions from the Federal excise tax, under section 5704. Section 5704(b) allows a manufacturer of tobacco products, cigarette papers or tubes, or an export warehouse proprietor to transfer tobacco products and cigarette papers and tubes, without payment of tax to the bonded premises of another manufacturer or export warehouse proprietor. As defined in section 5702, a manufacturer of tobacco products means any person who manufactures cigars, cigarettes, smokeless tobacco, or pipe tobacco. This term does not include a person who produces such products solely for the person's own consumption or use, or a proprietor of a customs bonded warehouse. A manufacturer of cigarette papers and tubes means a person who makes up cigarette paper and tubes, except for personal consumption. 26 U.S.C. 5702(h). An export warehouse proprietor means one who operates an export warehouse, which is a bonded internal revenue warehouse for the storage of tobacco products, and cigarette papers and tubes. See 26 U.S.C. 5702(i), (j).

Section 5704(b) also allows a manufacturer of tobacco products, and cigarette papers and tubes, or an export warehouse proprietor to remove tobacco products, and cigarette papers and tubes for shipment to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States. In addition, manufacturers may remove such articles for use of the United States without payment of the excise tax. Current ATF regulations which implement these provisions are located in 27 CFR part 290.

Furthermore, under 26 U.S.C. 5723(b), ATF is authorized to require certain marks, labels and notices on every package of tobacco products or cigarette papers. Based on this authority, for those products that are intended for export, 27 CFR 290.185 requires that every package of tobacco product that is deemed for export be marked with the words "Tax-exempt. For use outside U.S." or the words, "U.S. Tax-exempt. For use outside U.S." or a stamp, sticker or notice required by a foreign country or a possession of the United States, which identifies such country or possession. In addition, where taxpaid tobacco products are to be exported and a drawback of the tax paid to the manufacturer, 27 CFR 290.222 requires these packages to be marked with the words, "For Export with Drawback of Tax". These regulations serve two purposes. They enable us to clearly and easily identify packages of tobacco product that have been removed tax-free under section 5704(b) or subject to drawback under section 5706. In addition, the export marking requirement helps us to determine which tobacco products are intended for export. The regulations are a valuable enforcement mechanism that helps to prevent jeopardy of the revenue, because we can easily determine which products have been exempt from taxation and intended for export. When we identify a package of tobacco product in the U.S. market with tax-exempt export markings, we become concerned as to whether it has been Federally taxpaid.

## New Law

Congress specifically requires, under section 9302(h)(1)(A) of the Act, that tobacco products, and cigarette papers and tubes may not be transferred or removed under 26 U.S.C. 5704(b) unless they bear the proper marks, labels and

notices as required by the Secretary of the Treasury. Thus, the Secretary of the Treasury is authorized to prescribe the type of marks, labels and notices required on products that are exempt from taxation under 26 U.S.C. 5704(b). Congress wanted to specifically authorize ATF to determine, for products exempt from taxation under section 5704(b), required marks, labels and notices to ensure protection of the Federal excise tax revenue. Congress wanted to ensure that non-taxpaid products intended for exportation bear the proper markings. Congress also wanted to require that taxpaid products that are ultimately sold on the domestic market must not bear exportation markings. Allowing products with export markings on the domestic U.S. market would hinder ATF enforcement of lawfully due taxes, and cause confusion as to whether the product has been taxpaid.

Thus, based on this authority, ATF has amended three sections of the regulations. We are now requiring that tobacco products, and cigarette papers and tubes bear the required marks, labels and notices in order to qualify for transfer or removal of the product without payment of tax. Accordingly, we have amended 27 CFR 270.233, 290.61 and 290.181. Thus, under amended Sec. 270.233, tobacco products may not be transferred in bond unless they bear all required marks, labels and notices. In addition, under amended Sec. 290.61, tobacco products, and cigarette papers and tubes may not be removed for exportation without payment of tax unless they bear all required marks, labels and notices. We have also amended Sec. 290.181 to require that all tobacco products, cigarette papers and tubes must, before removal or transfer, bear the required marks, labels, or notices.

Finally, we have amended Sec. 290.181 to clarify that the "package", upon which the marking, labeling and notice requirements are to appear, does not include any cellophane wrapping material that may enclose a package. A package, thus, is only intended to include the actual material that holds and encloses the tobacco products, and cigarette papers or tubes. This amended definition clarifies placement of the marking, labeling and notice requirements. In keeping with Congressional intent to prevent diversion of tobacco products, we wanted to ensure that markings, labels and notices on products destined for export are clear and not easily destroyed.

#### Minimum Manufacturing Activity Requirements

##### Current Law

Section 5712 currently requires that every person, before commencing business as a manufacturer of tobacco products or as an export warehouse proprietor, shall apply for and obtain a permit to engage in such business. See also 26 U.S.C. 5713. (Effective January 1, 2000 importers will also be required to obtain a permit.) Under current law, the application may be rejected and the permit denied if, after notice and opportunity for hearing, we find that: (1) The proposed premises are not adequate to protect the revenue, (2) the applicant's business experience, financial standing or trade connections demonstrates that the applicant is not likely to comply with the law or (3) the applicant failed to disclose required material information or made a material false statement on the application. These factors enable ATF to ensure that those engaged in the business of

manufacturing tobacco products will adequately protect the revenue and comply with the law and regulations.

#### New Law

In section 9302 of the Act, Congress amended 26 U.S.C. 5712 by adding an additional factor for rejecting and denying an application for a permit. The new law provides that the an application may also be denied if "the activity proposed to be carried out at such premises does not meet such minimum capacity or activity requirements as the Secretary may prescribe." Based on this new language, ATF is authorized to establish minimum capacity or activity requirements, and will deny a permit application based on a failure to meet such minimum capacity or activity requirements. Congress enacted this provision to ensure that those who apply for a permit actually intend to engage in the bona fide business of manufacturing tobacco products in a way that will adequately protect the revenue and comply with the law and regulations.

In promulgating regulations that establish minimum capacity or activity requirements, ATF has considered several issues. ATF does not want to establish criteria that would effectively exclude small tobacco products manufacturers from obtaining a permit. In addition, ATF wants to establish criteria that will ensure that only those actually engaged in the business of manufacturing tobacco products are able to obtain a permit. Thus, ATF wants to establish criteria that would effectively exclude any persons who are not legitimate manufacturers and whose primary interest in obtaining a manufacturer's permit is to obtain the tax deferral benefits that a permit might facilitate.

#### Small Manufacturers

Section 5712 requires that prior to engaging in the business of manufacturing tobacco products, a person must obtain a permit from ATF. We believe that any manufacturer who proposes to engage in the business of manufacturing of tobacco products, regardless of size, should be eligible to receive a permit, so long as they meet the definition of a manufacturer as defined in section 5702(d) and have fulfilled the other conditions in the law and regulations. In the past, ATF has issued permits to some small manufacturers of tobacco products, such as those who manufacture hand-rolled cigars. Thus, we did not want to establish minimum capacity or activity criteria that would exclude small tobacco products manufacturers.

#### Downstreaming of Taxes

As stated, ATF needs to ensure that only those persons who fit within the definition of manufacturer at section 5702(d) are eligible to receive a permit. We would like to ensure that permits are not issued to persons who intend to use the permit to delay tax payment. In recent years, ATF has received inquiries from those who would like to obtain a permit and establish bonded premises for the primary purpose of receiving tobacco products in bond and delaying payment of Federal excise taxes.

The Federal excise tax on tobacco products attaches to the products as soon as they are produced. The manufacturer is liable for the tax on tobacco products held in bond. The manufacturer actually pays the tax when the tobacco product is removed from bond. See 26 U.S.C. 5703.

Generally, tobacco products are distributed under a three-tier distribution system. Once the manufacturer pays Federal excise tax after removal from bonded premises, the products are transferred to a wholesaler, which is the second level in the distribution system. The retailer is the third level in this tier system, and is a customer of the wholesaler.

As discussed previously, section 5704 provides that tobacco products may be transferred from a manufacturer or export warehouse proprietor to another manufacturer or export warehouse proprietor without payment of tax. Because of this exemption from taxation, a business could attempt to set up one or more wholesale warehouses

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with some de minimis production capability, and obtain a manufacturer's permit for each wholesale warehouse. Using the in bond transfer provision provided by section 5704, each warehouse would then be eligible to receive tobacco products in bond at each wholesale warehouse, without payment of the excise tax. The taxes on the product would not be due until the product was distributed from the wholesale level to the retail level. This approach is referred to as "downstreaming of taxes," since it moves the collection point for the excise tax from the production level to the wholesale level. This is potentially beneficial for manufacturers, since they can effectively delay taxpayment until the product is removed from essentially the wholesale level. At the same time, it has an adverse effect on Federal tax receipts, since it delays payment of the Federal excise tax.

We would like to prevent the downstreaming of taxes. It undermines the effect and purpose of obtaining a permit to engage in the business of manufacturing tobacco products. It also contravenes the safeguards in obtaining a permit: to protect and collect the Federal excise tax revenue. ATF is also concerned with the potential number of new taxpayers (i.e., wholesalers qualifying as manufacturers) and the proliferation of tax payment points, if this approach becomes widely used. We have found that the collection of excise taxes is best achieved at the highest level within the distribution chain--the manufacturer level. Collected at the manufacturer level, we have fewer taxpayers to monitor, and thus have more efficient tax collections and fewer administrative costs. By ensuring that tax payment is made at the true manufacturing level, we can decrease the likelihood that taxable product will evade proper tax payment.

Recognizing these concerns, ATF wants to ensure that the new minimum manufacturing criteria would prevent issuance of a permit to businesses that want to receive tobacco products in bond and delay Federal excise tax payments. In summary, we have amended the regulations whereby we will continue to issue permits to small manufacturers of tobacco products, despite limited production capacity, and to deny permits to persons who seek a permit for the principal purposes of receiving in-bond untaxed cigarettes.

#### Minimum Manufacturing Activity Criteria for Tobacco Products Manufacturers

Accordingly, ATF has amended the regulations at 27 CFR 270.61, by requiring that a permit will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any

person whose proposed principal activity under such permit will be to receive or transfer non-taxpaid tobacco products in-bond. Furthermore, to qualify for a permit, the amount of tobacco products manufactured under a permit must exceed the amount transferred or received in-bond under such permit. For example, a person who only manufactures 1,000 cigarettes per month, may receive a maximum of 999 cigarettes in bond during the month under that permit. Likewise, a person who manufactures 10,000,000 cigarettes a month could receive up to 9,999,999 cigarettes in bond during the month under that permit. As stated, the quantity of tobacco products received or transferred in bond under a particular permit may not exceed the quantity of tobacco products manufactured under that permit for any given month.

Again, this criteria is intended to ensure that only those persons, whose primary activity is the manufacture of tobacco products, receive a manufacturer's permit. We believe that these changes to the regulations effectively accommodate small producers, while protecting the timely assessment and collection of the Federal excise tax revenue. We have also amended regulations in 27 CFR 200.49b to include this new activity criterion as a basis for rejecting an application for a permit. We have not amended 27 CFR 200.46, regarding revocation or suspension of tobacco permits, because we already require compliance with regulations issued under the IRC.

#### Importers and Export Warehouse Proprietors

Effective January 1, 2000, the IRC also requires that importers obtain a permit prior to engaging in the business. See 26 U.S.C. 5712. We have considered the issue very carefully, and have decided that we will not impose minimum capacity or activity criteria for importers at this time. In addition, we will not impose this type of requirement on export warehouse proprietors. We do not think that either of these permittees will, or can engage in possible similar misuse of their permits. However, ATF will consider imposing minimum manufacturing or activity criteria on importers and export warehouse proprietors if the need should arise.

#### Import Restrictions on Previously Exported Tobacco Products, Cigarette Papers and Tubes

Section 9302 of the Act also added new section 26 U.S.C. 5754, entitled "Restriction on importation of previously exported tobacco products." This new section places severe limitations on the conditions under which previously exported tobacco products, and cigarette papers and tubes may be imported or brought back into the United States. This new section states that such products may only be imported or brought into the United States as provided in section 5704(d).

Section 5704(d) allows previously exported tobacco products and cigarette papers and tubes to be released from Customs custody, without payment of tax, for transfer to a manufacturer of tobacco products or cigarette papers and tubes, or to the proprietor of an export warehouse. We note that section 5704(d) allows previously exported tobacco products to be lawfully transferred to any manufacturer of tobacco products or cigarette papers and tubes, or to any export warehouse proprietor. The law does not mandate that the previously exported products return to its original manufacturer or export warehouse proprietor.

Thus, under section 5754, the only condition under which previously exported tobacco products and cigarette papers and tubes may be imported or brought into the United States is by release from Customs custody to a manufacturer or an export warehouse proprietor as an in-bond transfer. New section 5754 precludes the importation and tax payment of such products by an importer. The law is very clear and leaves no discretion to ATF in this regard. Section 5754 clearly states that such products may only be imported or brought into the United States by the method provided in section 5704(d); that is, a transfer, without payment of tax, to a manufacturer or export warehouse.

Based on the restrictive language of section 5754, ATF has amended several sections of the regulations in 27 CFR Part 275. Specifically, new or amended regulations now appear at 27 CFR 275.1, 275.81 and 275.82.

Under amended 27 CFR 275.1, the importation of tobacco products, and cigarette papers and tubes is generally discussed. In addition, 27 CFR 275.81 distinguishes between tobacco products and cigarette papers and tubes that are imported, and those that have been previously exported from the United States and returned to the US. Furthermore, 27 CFR 275.82 discusses

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the new restrictions on the return of exported products.

#### Penalty and Forfeiture Provisions

In addition to the above restrictions on importations, section 9302 of the Act also imposes a new civil penalty on persons, other than manufacturers or export warehouse proprietors, who sell, reland or receive tobacco products or cigarette papers or tubes that have been labeled or shipped for exportation under Chapter 52 of the IRC. The civil penalty is the greater of \$1,000 or five times the amount of tax imposed on the product. Thus, a larger penalty is imposed where the amount of the Federal excise tax on the product is greater than \$200. In addition to the civil penalty, criminal penalties and forfeiture of the product and any vessel, vehicle or aircraft involved in relanding or removing such product may be imposed. See 26 U.S.C. 5761(c).

#### Exemptions

The civil penalties do not apply to a manufacturer or export warehouse proprietor qualified under Chapter 52 of the IRC. See 26 U.S.C. 5704(b), 5704(d).

#### Application of Effective Dates

Section 9302(i) of the Act provides that the amendments to the IRC apply to "articles removed" after December 31, 1999. The Act amends the term "removed" to mean: "the removal of tobacco products or cigarette papers or tubes from the factory or from internal revenue bond under section 5704, as the Secretary shall by regulation prescribe, or release from customs custody, and shall also include the smuggling or other unlawful importation of such article into the United States."

The new civil and forfeiture penalty in section 5761(c) applies only to tobacco products, and cigarette papers and tubes bearing export



markings that have been "removed" on or after January 1, 2000. Accordingly, section 5761(c) applies to these products that are marked for export and removed from a manufacturer or export warehouse proprietor, released from Customs custody, or smuggled into the United States on or after January 1, 2000.

Articles that are removed on or before December 31, 1999 are not subject to the new penalty in section 5761(c). Tobacco products in packages bearing export marks that were lawfully removed from Customs custody and entered into the United States prior to January 1, 2000 are lawful products and not subject to the civil penalty under section 5761(c), or other criminal provisions of Chapter 52 of the IRC. These new penalty provisions have been added to 27 CFR 275.83.

ATF has carefully considered ways to enforce section 5761(c), since the domestic market will contain tobacco products that have been lawfully removed on or before December 31, 1999, and products marked for export that have been unlawfully introduced into the domestic market after December 31, 1999 and subject to the civil penalty. To differentiate between the products that have been lawfully removed and unlawfully removed, we considered whether or not to change the export marking requirements under 27 CFR 290.185 for products manufactured after December 31, 1999. We have initially rejected this possibility, since it would impose major burdens on tobacco manufacturers. ATF has decided that voluntary commercial marks placed on packages by the tobacco industry will enable us to distinguish between these products. However, we will, under section 5704(b) authority, change the export marking on products manufactured after December 31, 1999 to differentiate between products removed if future investigations disclose the need to do so.

#### Repackaging

As noted, Congress enacted a new section 5754 in the IRC. Under this section, tobacco products and cigarette papers and tubes previously exported from the United States may only be imported or brought into the United States as provided in section 5704(d). Section 5704(d) provides that tobacco products and cigarette papers and tubes exported and returned may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax, for delivery to a manufacturer of tobacco products or cigarette papers and tubes or to an export warehouse proprietor. Except for a qualified manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor, section 5761(c) imposes penalties for the selling, relanding, and receiving of tobacco products that are labeled or shipped for export. In effect, section 5761(c) prohibits the sale of relanded tobacco product bearing export markings.

Although manufacturers and export warehouse proprietors are authorized to receive relanded tobacco products or cigarette papers or tubes from customs custody without payment of the Federal excise tax, there are limitations on what manufacturers and export warehouse proprietors may do with such product. As discussed below, the products may be destroyed, re-exported, or in the case of a manufacturer, the product may be repackaged and removed for sale in the domestic market.

#### Export Warehouses

Section 5702 defines "export warehouse" to mean "a bonded internal revenue warehouse for the storage of tobacco products and

cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States." An export warehouse proprietor is one who owns an export warehouse. Export warehouse proprietors are authorized to store non-taxpaid tobacco products, and cigarette papers and tubes for subsequent exportation. Under the IRC, an export warehouse proprietor is not authorized to pay excise tax on tobacco products, including relanded tobacco products for distribution into the domestic U.S. market. Export warehouses are specifically established under the law to facilitate the exportation of tobacco products without payment of the excise tax. Thus, by definition, an export warehouse can only receive tobacco products in bond and export them or return them to a manufacturer. Because there is no authority for the export warehouse proprietor to pay the excise tax and distribute tobacco products onto the domestic U.S. market, an export warehouse proprietor may lawfully receive relanded tobacco products, transfer relanded tobacco products to a qualified manufacturer, or re-export the relanded tobacco products. Export warehouse proprietors may also destroy these relanded tobacco products.

#### Manufacturers

Manufacturers are authorized under the IRC to pay excise tax on and distribute tobacco products into the domestic market. See 26 U.S.C. 5703. However, the IRC also requires that before removal from a manufacturer's factory, tobacco products must be put up in packages and bear the marks, labels, and notices required by the Secretary.

As stated above, the Secretary has the general authority to prescribe packaging and marking requirements for tobacco products. See 26 U.S.C. 5723(a) and (b). Under this authority, ATF has prescribed regulations under 27 CFR 290.185 which require that products removed for exportation exempt from taxation must bear export markings. Again, such markings include the words, "Tax-exempt. For use outside of

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U.S." or "U.S. Tax-exempt. For use outside U.S." These export markings signify that the product is not subject to Federal taxes and that it is not intended for distribution within the United States. We rely on these markings to identify these products as a tax-exempt export for enforcement purposes. In addition, ATF has prescribed regulations under 27 CFR 290.222 which require that tobacco products and cigarette papers and tubes on which tax has been paid and a drawback claim has been made must have a label affixed reading "For Export With Drawback of Tax."

However, previously exported products that are relanded in the United States also bear the export markings required under Sec. 290.185 and Sec. 290.222 and may be intended for distribution in the domestic market. Because we cannot tell if a particular product on the market has been lawfully taxpaid and removed from Customs custody, or if it was smuggled into the U.S., the efficacy of the export marking requirements is severely reduced if these products are allowed in the domestic market. ATF has concluded that since relanded tobacco products are marked in accordance with the tobacco export regulations at 27 CFR 290.185 and bear a statement that says "Tax-exempt. For use outside of

U.S." or "U.S. Tax-exempt. For use outside U.S." or in accordance with 290.222 and bear a statement that says "For Export With Drawback of Tax," they are not properly marked for distribution on the domestic U.S. market. Further, if products with export markings were allowed on the domestic market, this practice would hinder ATF enforcement of the IRC and pose a jeopardy of the revenue. Our goal is to protect the revenue, and to determine whether the Federal excise tax on a relanded product has been paid. ATF has considered various options for removing these export markings and bringing relanded products into compliance with the domestic marking and labeling requirements. We have considered allowing such products to be over-stamped, allowing the obliteration of the tax-exempt marking, or allowing stickers to be placed over the markings. However these options of over-stamping, obliteration or stickers would negate the value of these markings as a tax enforcement tool. Over-stamping, obliteration, or placing stickers over the tax-exempt notice would not necessarily mean that the Federal excise tax had been paid on the relanded product. Any person could obtain product that had not been Federally taxpaid, and place stickers over the "tax exempt" notice on packages and distribute them in the domestic market.

After careful consideration of the issue, we have concluded that a manufacturer who distributes relanded tobacco products onto the domestic market, must remove the product from its original packages (bearing export markings) and repackage them into new packages with the proper mark and notice requirements for domestic U.S. distribution as prescribed in 27 CFR part 270. ATF has determined that in order to protect the Federal excise tax revenue, it is essential to require the repackaging of these reimported products before they are introduced in domestic commerce.

Thus, under 26 U.S.C. 5761(c), products labeled for export may not be sold on the domestic U.S. market. However, manufacturers are eligible to receive relanded tobacco products, and cigarette papers and tubes and sell them on the domestic market if they are completely repackaged under the laws and regulations for products not intended for exportation. Accordingly, amended 27 CFR 275.82(b) prescribes requirements for repackaging under these circumstances. Also, regulations have been added at 27 CFR 270.213 which notify manufacturers that tobacco products marked for export are not eligible for distribution on the domestic market, and the need to repackage such products.

Finally, similar to an export warehouse proprietor, a manufacturer may also transfer the tobacco products to another manufacturer or export warehouse proprietor, re-export the relanded tobacco products, or destroy these relanded tobacco products.

## Miscellaneous Changes

### Form Numbers

In addition to the changes to the regulations necessitated by Public Law 105-33, ATF is making several miscellaneous administrative changes that update the references to ATF Form numbers within the regulations. The regulations at 27 CFR 290.61a, 290.142, 290.198 through 290.208, 290.210, 290.213, and 290.256 through 290.267 are also amended to change all references from the obsolete form number ATF F 2149/2150, to the new form number ATF F 5200.14. The regulations in 27 CFR 290.152 through 290.154 are also amended to change all references from the obsolete form number: ATF F 2635, to the new form number: ATF

F 5620.8. The regulations in 27 CFR 290.62 are amended to delete obsolete references to a Customs form and regulatory citation.

#### Record Retention of ATF Forms

Minor changes are being made in the regulations to reflect the correct number of years that ATF forms numbers 5700.14 and 5620.8 must be retained. The regulations are amended to change the records retention period from 2 years to 3 years.

#### Manufacturer's Record

The record of a manufacturer of tobacco products at 27 CFR 270.183 is amended to include the term "roll-your-own tobacco" and to include a record of transfers to, and receipts from foreign trade zones.

#### Export Warehouse Records

The records required to be maintained by an export warehouse proprietor at 27 CFR 290.142 have been amended to include several new items of information. Proprietors will now be required to indicate the manufacturer and brand name of products: received, removed, transferred, destroyed, lost, or returned to manufacturers or customs bonded warehouses. In addition, their records must also include the number of containers and unit type (e.g., cartons, cases).

#### Definitions

To clarify the regulations, several definitions are being added to the "Meaning of terms" sections in 27 CFR 275.11 and 290.11. Section 275.11 is amended by adding definitions for the terms "export warehouse," "export warehouse proprietor," "manufacturer of tobacco products," "manufacturer of cigarette papers and tubes," and "relanding," Section 290.11 is amended by adding a definition for "zone restricted status."

#### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) do not apply. Moreover, any revenue effects of this rulemaking on small businesses flow directly from the underlying statute. Likewise, any secondary or incidental effects, and any reporting, recordkeeping, or other compliance burdens flow directly from the statute. Pursuant to 26 U.S.C. 7805(f), this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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#### Executive Order 12866

It has been determined that this temporary rule is not a significant regulatory action as defined by Executive Order 12866 because any economic effects flow directly from the underlying statute and not from this temporary rule. Therefore, a regulatory assessment is not required.

## Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(j)), and pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control numbers 1512-0367 and 1512-0358. Any agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this regulation is found in 27 CFR 270.183 and 290.142. The collection of this information is required to verify that all tobacco products can be accounted for, thus ensuring that the tax revenue is protected. Without these recordkeeping requirements, no recording of the data elements pertaining to these operations would be prescribed.

For further information concerning this collection of information, and where to submit comments on the collection of information, refer to the preamble of the cross-referenced notice of proposed rulemaking published in the proposed rules section of this Federal Register.

## Administrative Procedure Act

Because this document merely implements sections of the law which were enacted on August 5, 1997, and because immediate guidance is necessary to implement the provisions of the law, it is found to be contrary to the public interest and impracticable to issue this Treasury decision with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

## Drafting Information

The principal authors of this document are Ms. Teri Byers and Mr. Daniel Hiland, of the Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department also participated in developing this document.

## List of Subjects

### 27 CFR Part 200

Administrative practice and procedure, Authority delegations.

### 27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

### 27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection,

Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

## 27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

### Authority and Issuance

Accordingly, title 27, Code of Federal Regulations is amended as follows:

#### PART 200--RULES OF PRACTICE IN PERMIT PROCEEDINGS

Paragraph 1. The authority citation for part 200 continues to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par 2. Section 200.49b is amended by redesignating paragraph (b) as paragraph (c) and by adding a new paragraph (b) to read as follows:

Sec. 200.49b Applications for tobacco permits.

\* \* \* \* \*

(b) The applicant for a permit does not meet the minimum manufacturing and activity requirements in 27 CFR 270.61; or

\* \* \* \* \*

#### PART 270--MANUFACTURE OF TOBACCO PRODUCTS

Par 3. The authority citation for part 270 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5753, 5761-5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 270.61 is revised to read as follows:

### Sec. 270.61 Qualification--General

(a) Who must qualify. Every person who produces tobacco products except for his or her own personal consumption or use, shall qualify as a manufacturer of tobacco products in accordance with the provisions of this part.

(b) Minimum manufacturing and activity requirements. A permit to

manufacture tobacco products will only be granted to those persons whose principal business activity under such permit will be the original manufacture of tobacco products. A permit will not be granted to any person whose principal activity under such permit will be to receive or transfer tobacco products in bond. As a minimum activity requirement, in order to qualify for a permit, the quantity of tobacco products manufactured under the permit must exceed the quantity to be transferred or received in bond under the permit. For the purposes of this section, repackaging or relabeling activities alone do not qualify as a manufacturing activity.

Par. 5. Section 270.183 is revised to read as follows:

Sec. 270.183 Record of tobacco products.

The record of a manufacturer of tobacco products shall show the date and total quantities of all tobacco products, by kind (small cigars-large cigars; small cigarettes-large cigarettes; chewing tobacco-snuff; pipe tobacco; roll-your-own tobacco):

- (a) Manufactured;
- (b) Received in bond by--
  - (1) Transfer from other factories,
  - (2) Release from customs custody,
  - (3) Transfer from export warehouses, and
  - (4) Transfer from foreign trade zone;
- (c) Received by return to bond;
- (d) Disclosed as an overage by inventory;
- (e) Removed subject to tax (itemize large cigars by sale price in accordance with Sec. 270.22);
- (f) Removed, in bond, for--
  - (1) Export,
  - (2) Transfer to export warehouses,
  - (3) Transfer to other factories,
  - (4) Transfer to a foreign trade zone
  - (5) Use of the United States, and
  - (6) Experimental purposes off factory premises;

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- (g) Otherwise disposed of, without determination of tax, by--
  - (1) Consumption by employees on factory premises,
  - (2) Consumption by employees off factory premises, together with the number of employees to whom furnished,
  - (3) Use for experimental purposes on factory premises,
  - (4) Loss,
  - (5) Destruction, and
  - (6) Reduction to materials;
- (h) Disclosed as a shortage by inventory; and
- (i) On which the tax has been determined and which are--
  - (1) Received, and
  - (2) Disposed of.

(Approved by the Office of Management and Budget under control number 1512-0358)

Par. 6. Section 270.213 is added to read as follows:

Sec. 270.213 Tobacco products labeled for export.

Tobacco products labeled for export are ineligible for removal from the factory and distribution into the domestic U.S. market. Such products may only be sold, transferred or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this section, "repackaging" shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of this subpart.

Par. 7. Section 270.233 is amended by adding a new sentence to the end of the section to read as follows:

Sec. 270.233 Transfer in bond.

\* \* \* Tobacco products are not eligible for transfer in bond to a manufacturer of tobacco products or to an export warehouse unless they bear all required marks, labels, or notices.

PART 275--IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

Par. 8. The authority citation for part 275 is revised to read as follows:

Authority: 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 9. Section 275.1 is revised to read as follows:

Sec. 275.1 Importation of tobacco products and cigarette papers and tubes.

This part contains regulations relating to tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States; the removal of tobacco products from a customs bonded manufacturing warehouse, class 6; restrictions on the importation of previously exported tobacco products and cigarette papers and tubes; and the release of tobacco products and cigarette papers and tubes from customs custody, without payment of internal revenue tax or customs duty attributable to the internal revenue tax.

Par. 10. Section 275.11 is amended by adding in alphabetical order, definitions for the terms "Export warehouse," "Export warehouse proprietor," "Manufacturer of tobacco products," "Manufacturer of cigarette papers and tubes," and "Relanding" to read as follows:

Sec. 275.11 Meaning of terms.

\* \* \* \* \*



Export warehouse. A bonded internal revenue warehouse for the storage of tobacco products and cigarette papers and tubes, upon which the internal revenue tax has not been paid, for subsequent shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States.

Export warehouse proprietor. Any person who operates an export warehouse.

Manufacturer of tobacco products. Any person who manufactures cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco. A manufacturer of tobacco products does not include:

(1) A person who produces cigars, cigarettes, smokeless tobacco, pipe tobacco, or roll-your-own tobacco solely for the person's own personal consumption or use; or

(2) A proprietor of a Customs bonded manufacturing warehouse with respect to the operation of such warehouse.

Manufacturer of cigarette papers and tubes. Any person who makes up cigarette papers or cigarette tubes, except for personal use or consumption.

Relanding. Any tobacco products, cigarette papers or tubes, which have been labeled or shipped for exportation (including to Puerto Rico) as prescribed in this chapter, previously exported and returned within the jurisdiction of the United States. This term does not apply to any tobacco products, cigarette papers or tubes that are placed in appropriately marked receptacles by travelers or passengers prior to making their declaration to a U.S. Customs officer upon arrival in the United States.

\* \* \* \* \*

Par. 11. Paragraph (a) of Sec. 275.81 is revised to read as follows:

Sec. 275.81 Taxpayment.

(a) General. The provisions of this section apply to tobacco products, cigarette papers, and cigarette tubes upon which internal revenue tax is payable, and which are imported into the United States from a foreign country or are brought into the United States from Puerto Rico, the Virgin Islands, or a possession of the United States. For provisions relating to the importation of previously exported tobacco products and cigarette papers and tubes, see section 275.82.

\* \* \* \* \*

Par. 12. Add Sec. 275.82 to subpart F after the undesignated center heading "Release from Customs Custody \* \* \*" to read as follows:

Sec. 275.82 Return of exported products.

(a) The provisions of this section apply to articles imported or brought into the United States after December 31, 1999. After such date, the importation or bringing in of tobacco products and cigarette papers and tubes that were previously exported from the United States is restricted. Such products may only be imported or brought into the United States by release from customs custody for delivery to a manufacturer of tobacco products or cigarette papers or tubes, or to the proprietor of an export warehouse. These products are transferred in bond and are released from customs custody without payment of that

part of the duty attributable to internal revenue tax.

(b) The products described in paragraph (a) of this section may only be sold, transferred, or delivered onto the domestic U.S. market by a manufacturer of tobacco products after repackaging of the product. For the purposes of this subsection, "repackaging" shall mean the removal of the tobacco product from its original package bearing the export marks and placement of the product in a new package. The new packages, marks and notices must conform to the requirements of 27 CFR part 270.

Par. 13. Add Sec. 275.83 to subpart F after the undesignated center heading "Release from Customs Custody of \* \* \*" to read as follows:

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#### Sec. 275.83 Penalties and forfeiture for relanded products.

Except for the return of exported products that are specifically authorized under Sec. 275.82:

(a) Every person who sells, relands, or receives within the jurisdiction of the United States any tobacco products or cigarette papers or tubes which have been labeled or shipped for exportation;

(b) Every person who sells or receives such relanded tobacco products or cigarette papers or tubes; and,

(c) Every person who aids or abets in such selling, relanding, or receiving, shall, in addition to the tax and any other penalty provided for in Title 26 U.S.C., be liable for a penalty equal to the greater of \$1,000 or 5 times the amount of the tax imposed by Title 26 U.S.C. All tobacco products and cigarette papers and tubes relanded within the jurisdiction of the United States, and all vessels, vehicles and aircraft used in such relanding or in removing such products, papers, and tubes from the place where relanded, shall be forfeited to the United States. This section shall apply only to tobacco products, cigarette papers and tubes removed after December 31, 1999.

#### PART 290--EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

Par. 14. The authority citation for part 290 is revised to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703-5705, 5711-5713, 5721-5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 15. Section 290.11 is amended by adding, in alphabetical order, the definition of "Zone restricted status" to read as follows:

#### Sec. 290.11 Meaning of terms.

\* \* \* \* \*

Zone restricted status. Tobacco products, cigarettes papers and cigarette tubes which have been taken into a foreign trade zone from United States Customs territory for the sole purpose of exportation or storage until exported.

\* \* \* \* \*

Par. 16. Section 290.61 is revised to read as follows:

Sec. 290.61 Removals, withdrawals, and shipments authorized.

(a) Tobacco products, and cigarette papers and tubes may be removed from a factory or an export warehouse, and cigars may be withdrawn from a customs warehouse, without payment of tax, for direct exportation or for delivery for subsequent exportation, in accordance with the provisions of this part.

(b) Tobacco products and cigarette papers and tubes are not eligible for removal or transfer in bond under this part unless they bear the marks, labels, or notices required by this part.

Sec. 290.61a [Amended]

Par. 17. Section 290.61a is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

Par. 18. In Sec. 290.62 the fifth sentence and the seventh sentence of the section are amended to read as follows:

Sec. 290.62 Restriction on deliveries of tobacco products and cigarette papers and tubes to vessels and aircraft, as supplies.

\* \* \* For this purpose, the customs authorities may require the master of the receiving vessel to submit for customs approval, prior to lading, customs documentation for permission to lade the articles. \* \*  
\* Deliveries may be made to aircraft clearing through customs en route to a place or places beyond the jurisdiction of the internal revenue laws of the United States, and to aircraft operating on a regular schedule between U.S. customs areas as defined in the Air Commerce Regulations (19 CFR part 122).

\* \* \* \* \*

Par. 19. Section 290.142 is revised to read as follows:

Sec. 290.142 Records.

Every export warehouse proprietor must keep in such warehouse complete and concise records, containing the:

- (a) Number of containers;
- (b) Unit type (e.g., cartons, cases);
- (c) Kind of articles (e.g., small cigarettes);
- (d) Name of manufacturer and brand; and,

(e) Quantity of tobacco products, cigarette papers and tubes received, removed, transferred, destroyed, lost or returned to manufacturers or to customs warehouse proprietors. In addition to such records, the export warehouse proprietor shall retain a copy of each Form 5200.14 received from a manufacturer, another export warehouse proprietor, or customs warehouse proprietor, from whom tobacco products and cigarette papers and tubes are received and a copy of each Form 5200.14 covering the tobacco products, and cigarette papers and tubes removed from the warehouse. The entries for each day in the records maintained or kept under this section shall be made by the close of the

business day following that on which the transactions occur. No particular form of records is prescribed, but the information required shall be readily ascertainable. The records and copies of Form 5200.14 shall be retained for 3 years following the close of the calendar year in which the shipments were received or removed and shall be made available for inspection by any ATF officer upon request.

(Approved by the Office of Management and Budget under control number 1512-0367)

Sec. 290.143 [Amended]

Par. 20. Section 290.143(b) is amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

Sec. 290.147 [Amended]

Par. 21. Section 290.147 is amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

Sec. 290.152 [Amended]

Par. 22. Section 290.152 is amended by removing the reference "Form 2635" and add in its place the reference "Form 5620.8". Section 290.152 is also amended by removing the words "two years" and adding in its place the phrase "3 years".

Sec. 290.153 [Amended]

Par. 23. Section 290.153 is amended by removing the reference to "Form 2635 (5620.8)" and add in its place the reference "Form 5620.8".

Sec. 290.154 [Amended]

Par. 24. Section 290.154 is amended by removing the reference to "Form 2635 (5620.8)" and add in its place the reference "Form 5620.8". Section 290.154 is also amended by removing the phrase "2 years" and by adding in its place the phrase "3 years".

Par. 25. Section 290.181 is revised to read as follows:

Sec. 290.181 Packages.

All tobacco products and cigarette papers and tubes will, before removal or transfer under this subpart, be put up by the manufacturer in packages which shall bear the label or notice, tax classification, and mark, as required by this subpart. For purposes of this subpart, the package does not include the cellophane wrapping material.

Sec. 290.198 [Amended]

Par. 26. Section 290.198 is amended by removing the references "Form 2149" and "Form 2150" and adding in their place the reference "Form 5200.14".

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Sec. 290.199 [Amended]

Par. 27. Section 290.199 is amended by removing the reference "Form 2149 or Form 2150" and adding in their place the reference "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Sec. 290.200 [Amended]

Par. 28. Section 290.200 is amended by removing the reference to "Form 2149 or 2150, as the case may be," and adding in its place the reference "Form 5200.14".

Sec. 290.201 [Amended]

Par. 29. Section 290.201 is amended by removing the reference "Form 2150" and adding in its place the reference "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Secs. 290.202 through 290.204 [Amended]

Par. 30. Sections 290.202 through 290.204 are amended by removing the reference "Form 2149 or Form 2150" and adding in its place the reference "Form 5200.14".

Sec. 290.205 [Amended]

Par. 31. Section 290.205 is amended by removing the reference "Form 2149/2150 (5200.14)" wherever it appears in paragraphs (a)(1) and (d) and adding in its place the reference "Form 5200.14".

Sec. 290.206 [Amended]

Par. 32. Section 290.206 is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

Secs. 290.207 through 290.208 [Amended]

Par. 33. Sections 290.207 through 206.208 are amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

Sec. 290.210 [Amended]

Par. 34. Section 290.210 is amended by removing the reference "Form 2149 or 2150" and adding in its place the reference "Form 5200.14".

Sec. 290.213 [Amended]

Par. 35. Section 290.213 is amended by removing the reference "Form 2150" and adding in its place the reference "Form 5200.14".

Sec. 290.256 [Amended]

Par. 36. Section 290.256 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14".

Sec. 290.257 [Amended]

Par. 37. Section 290.257 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Secs. 290.258 through 290.265 [Amended]

Par. 38. Sections 290.258 through 290.265 are amended by removing the reference "Form 2149" each place it appears and adding in its place the reference "Form 5200.14".

Sec. 290.266 [Amended]

Par. 39. Section 290.266 is amended by removing the reference "Form 2150" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Sec. 290.267 [Amended]

Par. 40. Section 290.267 is amended by removing the reference "Form 2149" and adding in its place "Form 5200.14". This section is also amended by removing the words "two years" and adding in their place the words "3 years".

Signed: October 12, 1999.

John W. Magaw,  
Director.

Approved: November 17, 1999.

John P. Simpson,  
Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).  
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